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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY - 5 2003

In the Matter of

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Federal-State Joint Board on
Universal Service

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-45

TO: Federal-State Joint Board on Universal Service

COMMENTS OF INTERSTATE TELCOM CONSULTING, INC.

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Table of Contents

	<u>Page</u>
I. SUMMARY.....	ii
II. COMMENTS OF INTERSTATE TELCOM CONSULTING, INC.....	1
III. BACKGROUND: INTERSTATE TELCOM CONSULTING, INC.....	2
IV. ADDITIONAL ETCs SHOULD BE DESIGNATED ONLY WHEN BENEFITS EXCEED COSTS.....	2
V. HIGH-COST SUPPORT SHOULD BE CALCULATED AND DISTRIBUTED ON THE BASIS OF EACH ETCs STUDY AREA WITHIN EACH STATE.....	9
VI. AUCTIONS OF UNIVERSAL SERVICE SUPPORT WOULD DISRUPT AND DISCOURAGE TELECOMMUNICATIONS INFRASTRUCTURE INVESTMENT.....	12
VII. CONCLUSION.....	13

Summary

Interstate Telcom Consulting, Inc. (ITCI") urges the Joint Board and FCC to address and resolve the universal service portability issues in this proceeding in a manner that encourages private sector investment in telecommunications infrastructure. This is the overriding goal of the Telecommunications Act of 1996.

ITCI asks the Joint Board and FCC to implement the statutory requirement of Section 214(e) of the Communications Act that designations of Competitive Eligible Telecommunications Carriers ("CETCs") in rural telephone company study areas be made only when they are in the public interest. ITCI proposes that carriers requesting CETC status be required to demonstrate that the specific benefits of their designation as CETCs outweigh the costs. Potential CETCs should be required to demonstrate that the new infrastructure investment and other concrete service, service area, service quality and rate benefits resulting from their designation as CETCs will outweigh the additional portable support outlays and other costs thereof. In addition, ITCI proposes that all wireline and wireless CETCs be subject to the same competitively neutral carrier of last resort obligations, service quality standards and rate regulation as incumbent local exchange carriers ("ILECs").

In cases where a wireline or wireless carrier is designated as a CETC, ITCI proposes that it be assigned a "study area" in each state for the determination, calculation and distribution of its high-cost support. This study area requirement recognizes the fact that telecommunications carriers construct and operate networks rather than lines. It will eliminate some of the market entry and investment distortions of the current "per-line"

system that favor wireless carriers over wireline carriers. In particular, the Joint Board and FCC should stop allowing wireless CETCs to receive substantial amounts of portable high-cost support in rural telephone service areas, when the major portion of their customer base is located in the low-cost urban and suburban areas of a state. Rather, CETCs should be assigned a study area in each state at the time they are designated as CETCs, and should receive high-cost support only if warranted by the averaged costs of their total urban, suburban and rural operations within that study area.

Finally, ITCI opposes the use of auctions or other competitive bidding mechanisms to determine eligibility for or amounts of support. Auctions will produce uncertainty and instability that would render it economically infeasible for many rural carriers to make long-term investments in telecommunications infrastructure.

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Universal Service)

TO: Federal-State Joint Board on Universal Service

COMMENTS OF INTERSTATE TELCOM CONSULTING, INC.

Interstate Telcom Consulting, Inc. ("ITCI") hereby submits its comments in response to the Public Notice (Federal-State Joint Board On Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process), CC Docket No. 96-45, FCC 03J-1, released February 7, 2003 ("Public Notice").

ITCI will focus its comments on the following three matters: (1) implementation of more substantial public interest requirements for designation of Competitive Eligible Telecommunications Carriers ("CETCs") in rural telephone company service areas; (2) determination, calculation and distribution of high-cost support for all ETCs on the basis of their own study area (rather than incumbent local exchange carrier ("ILEC") study areas) within each state; and (3) the utter inadequacy of auctions as a mechanism to determine and distribute high-cost support. ITCI's positions on all of these issues are intended to further the predominant and overriding goal of the Telecommunications Act of 1996 -- the encouragement of private sector investment in telecommunications infrastructure.

Interstate Telecom Consulting, Inc.

ITCI is a telecommunications consulting firm located in Hector, Minnesota. Its five principal employees have over 145 years of collective experience in the telecommunications industry. ITCI has served rural telephone companies continuously since it commenced operations in April of 1981. ITCI performs a variety of telecommunications consulting services for rural telephone companies, including cost separation studies, revenue forecasting, access tariff development, depreciation studies, continuing property record maintenance, traffic engineering and analysis, Carrier Access Billing System (CABS) billing and reviews, long distance consulting, National Exchange Carrier Association (NECA) reporting, average schedule settlements, access service requests (ASRs), AOCN services, circuit provisioning, business plans, and exchange acquisition assistance.

ITCI's rural telephone company clients range in size from 40 access lines to 22,000 access lines, and are located primarily in the states of Minnesota, Wisconsin, Michigan, Iowa, South Dakota, Ohio and Montana. A list of the forty-nine rural telephone company clients that ITCI is representing in this proceeding is attached as Exhibit 1.

Additional ETCs Should Be Designated Only When Benefits Exceed Costs

The Joint Board has requested comment regarding the designation of CETCs under Section 214(e) of the Communications Act (Public Notice, paras. 33 and 34). ITCI believes that the statutory public interest requirements in Section 214(e) of the Communications Act should be fully implemented to require detailed cost-benefit

analyses to be conducted before CETCs are designated in areas served by rural telephone companies. The Federal Communications Commission ("FCC") and state commissions should not designate an entity as a CETC unless the entity demonstrates that the tangible public interest benefits of designation exceed the costs thereof. In addition, all entities that voluntarily seek and obtain CETC status and high-cost support should be subject to the same "competitively neutral" regulatory requirements as the ILECS with whom they compete, including carrier of last resort obligations, service quality standards, and rate regulation.

As a preliminary matter, ITCI notes that federal and state regulators increasingly have been referring to "fostering competition" and "maintaining universal service" as the "dual goals" of the 1996 Act. In fact, the legislative history of the 1996 Act makes it absolutely clear that "competition" and "universal service" were never the "goals" of the statute. Rather, they were the principal "means" designated by Congress for use in trying to attain the overriding goal of the 1996 Act -- the encouragement of private sector investment in telecommunications infrastructure. The Conference Report for the 1996 Act (H. Rept. 104-458) made this very clear when it declared that the pro-competitive, deregulatory framework of the Act was "designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans." 142 Cong. Rec. H1078 (January 31, 1996).

During the mid-1990s when digital technologies and the Internet were advancing rapidly, the Clinton Administration and Congress wanted the public network to be upgraded to accommodate the resulting new voice, data and video services. However, budget deficits and political differences precluded the use of public funds for

infrastructure investment. The legislative compromise was to encourage infrastructure investment by reducing regulation and promoting competition among the entities in the converging telecommunications, computer and video industries. However, recognizing that airline competition had previously resulted in service losses for many rural communities, Congress added the universal service provisions of Section 254 as a "safety net" for rural and other high-cost areas where competition might not develop or might not produce the desired infrastructure investment. The point is that neither the 1996 Act nor its universal service provision was enacted to encourage competition for the sake of competition. Rather, competition and universal service were the complementary tools intended by the Congress to encourage infrastructure investment.

Cost-Benefit Test. Sections 214(e)(2) and (e)(6) of the Act expressly require state commissions and the FCC to make a specific finding that the designation of an additional ETC for an area served by a rural telephone company is "in the public interest." However, the FCC and many state commissions have not been conducting substantive public interest analyses, but instead have been designating additional CETCs on little more than bare assertions that such designations will "promote competition" or "increase consumer choices."¹

As a result, the most rapidly growing portion of the Universal Service Fund during recent years has been portable support for wireless CETCs. This has increased from nothing in 1998, to \$440 thousand in 1999, to \$2.13 million in 2000, to \$11.27

¹ See, e.g. Order on Remand (Western Wireless Corporation Designated Eligible Carrier Application), Case No. PU-1564-98-428 (North Dakota Public Service Commission, Oct. 3, 2001); Memorandum Opinion and Order (Federal-State Joint Board on Universal Service; Western Wireless Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming), 16 FCC Rcd 48, 55 (2000).

million in 2001, to \$68.68 million in 2002, to a projected \$101.85 million in 2003.² If the FCC and many state commissions continue to rubber-stamp requests for designation of additional CETCs in rural telephone company service areas, this segment of the USF may increase by \$2 billion or more during the next few years. In fact, the unrestrained granting of CETC status by the FCC and many state commissions is virtually forcing wireless carriers that do not yet receive portable high-cost support dollars to seek and obtain CETC status in order to keep pace with their wireless competitors.

Unfortunately, this skyrocketing portable wireless CETC support does not appear to be producing comparable amounts of new wireless infrastructure investment in Rural America. Instead, substantial numbers of the "working loops" for which wireless CETCs are requesting and receiving portable support appear to be "working loops" of pre-existing customers who were taking wireless service before their wireless carrier was designated as an ETC. The portable support received for such "working loops" constitutes "found money" more likely to increase the profits of wireless CETCs than to produce additional wireless infrastructure investment. In addition, there are concerns that "billing addresses" are being used to claim portable support for wireless customers "located" in rural telephone company service areas (where per-line support is high) when the supported wireless phones are actually being used primarily in urban and suburban areas (where per-line support is much lower or nonexistent).

The most feasible and practicable way to implement the statutory public interest requirement is to require the FCC and state commissions to conduct a detailed and

² Source: OPASTCO, Universal Service in Rural America: A Congressional Mandate at Risk (January 2003), at Table 3.

specific cost-benefit analysis before designating a CETC in an area served by a rural telephone company. Every entity requesting designation as a CETC should be required to demonstrate that the specific and tangible public interest benefits of such designation exceed the additional costs thereof.

Because infrastructure investment is the overriding goal of the 1996 Act, all entities requesting designation as a CETC should be required to submit a specific plan detailing: (1) the new infrastructure they propose to deploy in the area for which they are requesting CETC status; (2) the estimated cost of their investment in the proposed new infrastructure; and (3) the proposed schedule for deployment of the new infrastructure. If CETC status is granted, it should be conditioned upon compliance with this proposed infrastructure investment plan and schedule, and should be revoked in the event of non-compliance.

In addition, entities seeking designation as CETCs would have the option of presenting evidence of additional public interest benefits in the form of: (1) the specific existing or new telecommunications and information services that they propose to deploy in the area for which they are requesting CETC status, together with a specific timetable for such deployment(s); (2) the specific areas (including unserved and underserved areas) that they propose to serve, together with a specific timetable for the introduction of service in each area; (3) the specific service quality standards they propose to implement, together with a specific timetable for implementing these standards and specific procedures for monitoring them; and (4) the specific affordable rates that they will charge for each proposed service option. The information regarding specific services and service areas will help the federal or state regulator determine the extent to which the

proposed CETC designation will produce benefits in the form of increased access by rural consumers to telecommunications and information services that are reasonably comparable to those provided in urban areas (thus complying with the criteria in Section 254(b)(2) of the Act), as well as clarifying the specific degree to which competition will be enhanced and consumer choices increased. The information regarding service quality and affordable rates will help the regulators determine the extent to which the proposed CETC designation will produce benefits in accordance with the quality and affordability criteria of Section 254(b)(1) of the Act.

The primary "cost" in the cost-benefit analysis for each proposed CETC designation will be the dollar amount of the additional portable high-cost support that will be paid to the new CETC. In addition, previously-designated ETCs would have the option of presenting evidence that designation of an additional CETC will preclude or delay their investment in specific infrastructure upgrades or additions, or otherwise result in specific reductions in the services or service quality that they will be able to provide.

The FCC or state commission would then balance the benefits of the proposed CETC's infrastructure investment plan (plus any additional service, service area, service quality or rate benefits) against the costs of the incremental high-cost support (plus any specific investment, service or service quality cut-backs by existing ETCs). If the commission determines that the specific benefits exceed the specific costs, it will rule that the Section 214(e) public interest test is met and designate the additional CETC. If it determines that the specific costs exceed the specific benefits, it will deny the CETC designation request for failure to satisfy the public interest test.

Competitively Neutral Regulation. In addition to implementing an appropriate and specific public interest determination, the FCC and state commissions should also monitor the services, service areas, service quality and rates of all competing ETCs in a competitively neutral manner.

Under Section 332(c)(3) of the Communications Act, it is clear that a FCC-licensed wireless carrier can commence operations in a state without state commission certification, but that the state can thereafter regulate all aspects of the wireless carrier's operations (e.g., service quality and customer service practices) except its rates. At the same time, Sections 214(e) and 254(f) of the Act give state commissions clear and express jurisdiction to designate wireline and wireless carriers as ETCs, as well as to impose additional, non-conflicting standards. Hence, when a wireless carrier voluntarily seeks ETC status in order to obtain portable high-cost support dollars, it subjects itself to the ETC jurisdiction of the state commission. This plainly includes service, service area, and service quality regulation; and should also encompass rate regulation if the state commission imposes affordable rate requirements upon all ETCs.

Competitively neutral regulation means, at the very minimum, that each CETC should have the same carrier of last resort obligations as the ILEC with which it competes for customers and high-cost support. Given that one of the purposes of universal service support is to enable carriers to provide affordable service to remote and other high-cost customers, all ETCs that request and accept support should have the same obligations to serve these high-cost customers.

In addition, CETCs should be required to furnish service quality equivalent to that required to be provided by ILECs and other ETCs, including clear and audible voice

conversations, minimal call blocking, and infrequent dropped calls. One of the principal objectives of the Universal Service program is the availability of quality services. 47 U.S.C. Sec. 254(b)(1). If a carrier is receiving high-cost support, its customers should not be subjected to static and frequent break-up of voice signals, blocking of more than one percent (1%) of their calls, and frequent dropping of their calls.

Another foundation of the Universal Service program is that services must "be available at just, reasonable, and affordable rates." 47 U.S.C. Sec. 254(b)(1). Where state commissions regulate the rates of ILECs designated as ETCs, they should also regulate the rates of the CETCs designated in overlapping service areas, including wireless CETCs, to ensure that such supported rates are just, reasonable and affordable. As indicated above, the limitations of Section 332(c)(3) of the Communications Act are superseded or rendered inapplicable when a wireless carrier voluntarily seeks ETC designation and subjects itself to the state commission's ETC jurisdiction.

**High-Cost Support Should Be Calculated and Distributed
On the Basis of Each ETC's Study Area Within Each State**

The Joint Board has requested comment regarding the methodology for calculating support for ETCs in competitive study areas (Public Notice, paras. 15 and 16).

ITCI believes that high-cost support should be calculated and distributed to CETCs on the same basis that it is calculated and distributed to ILECs -- namely, with respect to a study area designated in each state. Study areas generally correspond to a carrier's network in the state. High-cost support should be determined on the basis of study areas because carriers do not invest in and construct "lines"; they build networks.

Customers do not purchase service on "lines"; they subscribe to service on a network so that they can communicate with all the other people connected to the network.

ITCI believes that many of the problems and distortions of the current portable high-cost support mechanism are due to a lack of focus upon the essential network character of telecommunications investment and service. The current system of basing support for CETCs upon the support that the incumbent ILEC would receive for the same "line" distorts investment and market entry incentives, while favoring wireless carriers and disfavoring wireline carriers.

At present, ILECs generally receive high-cost support on the basis of their study area within a state. Regional Bell Operating Companies ("RBOCS") and other large ILECs that serve study areas comprised of both urban and rural areas within a state often receive little or no high-cost support because the high costs of their rural exchanges are averaged-out by the lower costs of their more populous urban exchanges. In contrast, neither wireline nor wireless CETCs receive high-cost support on the basis of their own study area or network within a state. Rather, they receive portable support on the basis of the separate ILEC study area or areas that they overlap. This system has disadvantaged many wireline CETCs, while bestowing substantial unwarranted preferences upon certain wireless CETCs. For example, wireline CETCs that have brought facilities-based competition to underserved rural communities often receive little or no portable support because the statewide study area of the RBOC or other large ILEC against which they compete does not qualify for high-cost support. In contrast, a wireless CETC that serves the urban centers of a state may receive substantial amounts of portable support because it is designated as a CETC in a couple of rural telephone company study areas , even

though the statewide cost structure of its heavily urbanized service area would otherwise not enable it to qualify for high-cost support.

For example, SBC serves not only the populous Milwaukee, Madison and other urban areas of Wisconsin, but also numerous high-cost rural communities. However, because the lower per-loop costs of its Milwaukee and other urban Wisconsin exchanges reduce its statewide average costs below the threshold for high-cost support, SBC receives little or no support for its Wisconsin exchanges, including its high-cost exchanges in rural Wisconsin. Should a wireline CETC overbuild one or more of SBC's high-cost rural exchanges, the wireline CETC will get little or no portable high-cost support because SBC receives none for its statewide study area, even though the wireline CLEC's costs are otherwise high enough to qualify for support. In contrast, if a wireless CETC that serves Milwaukee and other Wisconsin cities extends its service into areas served by rural telephone companies, it is not presently required to average its statewide costs like SBC. Rather, the wireless CETC will be able to claim substantial amounts of portable support in rural exchanges served by rural telephone companies, without regard to the fact that the averaged costs of its heavily urban statewide service area would not otherwise qualify for high-cost support. In sum, the current system is not the least bit competitively neutral, and is likely to distort market entry and investment decisions.

Competitive neutrality requires that high-cost support for all ETCs be calculated and distributed on the same basis. ITCI proposes that a "study area" be specified for each designated CETC, and that such "study area" be comprised of all the areas within the state that it serves. If the entity subsequently expands its service area within the state, it should be required to reapply for CETC designation for the entire enlarged study area.

Where a state commission designates an entity as a CETC, portable high-cost loop support (including High-Cost Loop Support, Long Term Support, and Interstate Common Line Support or Interstate Access Support) should be calculated on the basis of the CETC's own costs within its "study area." If the CETC's "study area" contains 50,000 or fewer "loops" or loop equivalents, it should receive Local Switching Support (LSS) for its switch costs on the basis of the application of the LSS formulas to its facilities.

Calculating and distributing high-cost support on the basis of each CETC's own "study area" in each state will better ensure that market entry and infrastructure investment decisions are made on the basis of economic factors rather than portable support payments. It will also improve the targeting of high-cost support to the rural carriers and rural areas that need it, and minimize the ability of regional wireless carriers to "cherry-pick" portable support by serving a couple of rural telephone study areas within their heavily urban networks.

Auctions Of Universal Service Support Would Disrupt and Discourage Telecommunications Infrastructure Investment

The Joint Board has asked whether and how auctions might be utilized to award support (Public Notice, para. 20). ITCI vigorously opposes the use of any type of competitive bidding to award universal service support.

As emphasized above, the overriding goal of the 1996 Act is to encourage investment in telecommunications infrastructure. Whether the means of accomplishing this goal is competition or universal service (where competition does not develop or does not produce the desired result), the goal is to encourage infrastructure investment.

Telecommunications facilities are very capital-intensive, and require investments that must be recovered over lengthy periods (often 10 years or more). Such investments will not be financially feasible unless the owners, investors and lenders of rural carriers have reasonable assurance that their costs will be recovered.

It is hard to conceive of any mechanism that could disrupt telecommunications investment decisions and cost recovery any more than the auctioning of universal service support. What rational owner, investor or lender of a rural carrier will approve an investment that must be amortized over ten years if a significant portion of the required cost recovery stream may be eliminated or reduced at any time during the period due to the workings of an auction? What rural telephone company could get its owners, investors or lenders to approve a new \$1.25 million switch replacement or a \$2.5 million plant upgrade if the high-cost support that constitutes a substantial portion of its revenue stream might be eliminated or cut in half next year due to a universal service auction?

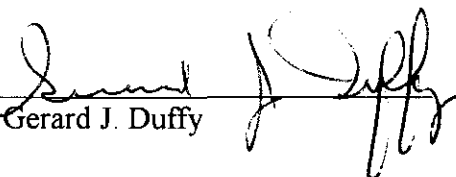
In other words, auctions of universal service support would create unnecessary and disruptive uncertainty regarding future cost recovery that would severely curtail future infrastructure investment. As such, auctions would violate the "specific, predictable and sufficient" principle of Section 254(b)(5) of the Act, as well as the "specific and sufficient" requirement of Section 254(e).

Conclusion

ITCI believes that the various Universal Service portability issues in this proceeding can be effectively and equitably addressed if the Joint Board and FCC focus upon the dominant goal of the Telecommunications Act of 1996 -- the encouragement of

private sector investment in telecommunications infrastructure. ITCI proposes first that the Joint Board and FCC implement a more substantial public interest criteria for designating CETCs in rural telephone company service areas. CETCs should not be designated unless the new infrastructure investment and other tangible benefits of designation outweigh the incremental portable high-cost support and other costs thereof. In addition, CETCs should be subject (as a condition of their designation) to the same carrier of last resort, service quality and affordable rate regulation as the ILECs against whom they compete for customers and high-cost support. For those entities that are designated CETCs, a "study area" should be designated in each state, and high-cost support should be determined, calculated and distributed on the basis of the cost structure of the CETC's own study area. Finally, auctions create too much uncertainty and instability for them to be effective as a mechanism to determine and distribute the high-cost support necessary to recover the long-term costs of infrastructure investment.

Respectfully submitted,
INTERSTATE TELCOM CONSULTING, INC.

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Dated: May 5, 2003

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BAYLAND TELEPHONE, INC.
BERGEN TELEPHONE COMPANY
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CHEQUAMEGON COMMUNICATIONS COOP., INC.
CHIBARDUN TELEPHONE COOP., INC.
CITIZENS TELEPHONE COOP., INC.
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CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing Comments were served by first class U.S. mail or hand delivery* on this 5th day of May, 2003 to the persons listed below:

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